



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2004

Mr. William T. Cornwell III
Attorney and Counselor at Law
2600 Lake Austin Boulevard, No. 8205
Austin, Texas 78703

OR2004-7109

Dear Mr. Cornwell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207718.

The San Marcos Public Housing Authority (the "authority"), which you represent, received a request for information related to agreements between the authority and Hunter Road Affordable Housing, Ltd. which pertain to the proposed Willow Springs Senior Residences. You state that you have no responsive information regarding a portion of the request. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You also state that you will provide the requestor with some of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.110 protects the property interests of private persons and entities by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code §552.110(b). You assert that the submitted information is commercial or financial information which is excepted from release under section 552.110(b) of the

Government Code. You contend that disclosure of the requested information to a “self-confessed competitor” would cause substantial harm to the authority. You also argue that the requestor “would be able to use information in the financial analyses and market studies to seek competitive advantage.” However, section 552.110 only protects the interests of the third parties from whom a governmental body obtains the information. *See Open Records Decision 319 (1982)* (commercial or financial information provision designed to protect third party interests). The provision does not protect the interests of a governmental body. Therefore, none of the submitted information is excepted from disclosure under section 552.110.

We note that portions of the submitted information are copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See Attorney General Opinion JM-672 (1987)*. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making such copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No.550 (1990)*. Accordingly, the authority must release the entirety of the submitted information to the requestor. However, in doing so, the authority must comply with the applicable copyright law for the portions of the submitted information that are copyrighted.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

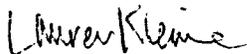
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 207718

Enc. Submitted documents

c: Mr. Lamar W. Hankins
Attorney and Counselor at Law
P.O. Box 665
San Marcos, Texas 78667
(w/o enclosures)